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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,491	06/23/2003	Michael D. Welch	2589.C1	1097

7590

10/25/2005

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EXAMINER

KACKAR, RAM N

ART UNIT

PAPER NUMBER

1763

DATE MAILED: 10/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,491

Applicant(s)

WELCH ET AL

Examiner

Ram N. Kackar

Art Unit

1763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-35, 40, 41 and 43-48 is/are rejected.
- 7) ☒ Claim(s) 36-39 and 42 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 31-35 and 45-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Comita et al (US 5914050)**

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Comita et al disclose a cylindrical liner having cylindrical inner and outer surfaces (Fig 2- Fig 6) an aperture and recess (34) in the outer surface contiguous with the aperture (38) recess 34 appears equal to or greater than the aperture 38. Since recess is contiguous with aperture it is contiguous with all sides of it.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 40, 41, 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohkase et al (WO 97/31389).**

Ohkase et al disclose an arcuate door for a slit valve having inner and outer surfaces (Fig 4-50A). In other embodiment Ohkase et al disclose a cylindrical liner (Fig 8A-50) with aperture (50B).

Regarding bevel shape it has been held by courts that the shape was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape was significant. (in *re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). (Also see MPEP 2144.04(d)).

5. **Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masataka Kase (JP 07254386).**

Masataka Kase discloses a cylindrical liner (Abstract and Fig 1-52) with aperture (65).

Regarding bevel shape it has been held by courts that the shape was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape was significant. (in *re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). (Also see MPEP 2144.04(d)).

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6. Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiba et al (JP 09326367).

Chiba et al disclose a cylindrical liner (Abstract and Fig 2-3B) with aperture (h).

Regarding bevel shape it has been held by courts that the shape was a matter of choice which a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular shape was significant. (in *re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). (Also see MPEP 2144.04(d)).

Allowable Subject Matter

7. Claims 36-39 and 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 36 was indicated allowable earlier since prior art does not fairly disclose or suggest an arcuate door within the recess of the liner. Claims 37-38 are indicated allowable in view of the 35 USC 103 (c) objection.

Response to Arguments

Applicant's arguments filed 7/22/2005 have been fully considered but they are not persuasive.

Regarding claims 31-35 and 45-48 applicant argues that since there is a wall between aperture 38 and the recess 34, recess 34 is clearly not contiguous with the aperture 38. In response examiner recites relevant page from The American Heritage Dictionary to clarify the

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meaning of the word “contiguous”. The meaning of “contiguous” is disclosed to be “sharing an edge or boundary” and could also be “nearby” or “adjacent”.

Obviousness rejection over Comita are withdrawn in view of 35 USC 103(c).

Applicant argues against rejection of claims 40, 41 and 43 stating that “the shape was a matter of choice which a person of ordinary skill in the art would have found obvious” is not applicable as there are advantages associated with the bevel shape.

Examiners position is that the relevance of bevel shape is due to the conforming shape of door and liner. There is no disclosed advantage of this shape to either door or liner alone. In these claims door or liner are claimed independently and not together. Any possible advantage of shape could only occur if used together.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ram N. Kackar whose telephone number is 571 272 1436. The examiner can normally be reached on M-F 8:00 A.M to 5:P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571 272 1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ram Kackar
Examiner AU 1763